

## Appendices

## ***Appendix A – Legislation***

### **350 CMR 11.00 Watershed Protection Regulations**

# WATERSHED PROTECTION

## 350 CMR 11

Department of Conservation and Recreation

with corrections, May, 1994

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### **11.01 Introduction and Purpose**

(1) Introduction - 350 CMR 11.00 is promulgated by the Commissioners of the Department of Conservation and Recreation pursuant to the authority granted

under St. 1992 c. 36. St. 1992 c. 36, § 2 amends M.G.L. c. 92, § 104 by adding certain definitions which are used in 350 CMR 11.03; St. 1992 c. 36, § 3 adds M.G.L. c. 92, § 107A defining the jurisdiction and exemptions contained in 350 CMR 11.04 and 350 CMR 11.05, respectively; and St. 1992 c. 36, § 4 amends M.G.L. c. 92, § 108 by requiring the Division of Watershed Management, after consultation with the Department of Environmental Protection, to make rules and regulations for the protection of Watersheds as defined in St. 1992 c. 36.

In addition, St. 1992 c. 36 and M.G.L. c. 92 authorize the Department of Conservation and Recreation and the Division of Watershed Management to make rules and regulations to protect the Watersheds as defined in St. 1992 c. 36 and the Watershed System as defined in St. 1992 c. 36 and M.G.L. c. 92. The Department of Environmental Protection is also required under St. 1992 c. 36, § 14 to adopt rules and regulations for the prevention of pollution and securing the sanitary protection of all waters used as sources of water supply in the Commonwealth other than in the Watersheds as defined in St. 1992 c. 36. Regulations currently exist for:

- (a) the sanitary protection of waters used by the Department of Conservation and Recreation (310 CMR 23.00);
- (b) land within Watershed Reservations (350 CMR 8.00);
- (c) sanitary rules and regulations for the Metropolitan Water Supply (350 CMR 9.00); and
- (d) fishing in Wachusett and Sudbury Reservoirs (350 CMR 10.00).

In order to facilitate review of all regulations promulgated by the Department of Conservation and Recreation and the Division of Watershed Management relating to Watersheds and the Watershed System, 350 CMR 11.09 includes regulations of general applicability to Waters of the Watershed System. The regulations in 350 CMR 11.09 are intended to supersede the regulations in 310 CMR 23.00, 350 CMR 8.01, 350 CMR 9.00, and 350 CMR 10.00, which shall be repealed on March 31, 1994.

(2) Purpose - The purpose of St. 1992 c. 36 is to improve the protection of the metropolitan water supply. St. 1992 c. 36 and 350 CMR 11.00 set forth a comprehensive scheme to regulate land use and activities within certain critical areas of the Watersheds and Watershed System.

The purpose of 350 CMR 11.00 is to define and clarify the restrictions and prohibitions set forth in St. 1992 c. 36 by establishing standard definitions and procedures under which the Division of Watershed Management may carry out its responsibilities under St. 1992 c. 36. 350 CMR 11.00 shall complement St. 1992 c. 36 and shall have the force of law on March 31, 1994.

## **11.02: General Provisions**

(1) Time Periods. Unless otherwise specifically provided in St. 1992 c. 36 or 350 CMR 11.00, computation of any time period referred to in 350 CMR 11.00 shall begin with the first day following the action which initiates the running of the time period. The last day of the time period so computed is to be included unless it is

a Saturday, Sunday or legal holiday or any other day on which the office of the Division is closed, in which event the period shall run until the end of the next following business day. When the time period is less than seven days, intervening days when the Division is closed shall be excluded in the computation.

(2) Timely Filing. All Papers must be filed at the Division office or such other place as the Division shall specify in 350 CMR 11.00 within the time limits set forth herein.

Unless otherwise specifically provided in St. 1992 c. 36 or 350 CMR 11.00, Papers filed in the following manner shall be deemed to be filed as set forth herein:

(a) *Hand delivery during business hours*. By hand delivery during business hours shall be deemed filed on the day delivered.

(b) *Hand delivery during non-business hours*. By hand delivery at times other than during regular business hours shall be deemed filed on the next regular business day.

(c) *Mailing*. By placing in the United States Mail certified or registered mail, return receipt requested shall be deemed filed on the date received by the Division.

All Papers shall show the date received by the Division and the Division shall cooperate in giving date receipts to Persons filing Papers by hand delivery.

(3) Actions by the Division. Where St. 1992 c. 36 states that a particular action (except receipt of a request or notice) is to be taken by the Division, that action is to be taken by the person designated by 350 CMR 11.00 or, if by a committee, by more than half the members present at a meeting of at least a quorum. A quorum is defined as a Majority of the members then in office.

(4) Burden of Proof. Any Person who files a request for Advisory Ruling, a request for Watershed determination of applicability, an application for variance or a request for Exemption of a Tributary shall have the burden of producing credible evidence from a competent source in order to demonstrate to the Division or, in the case of an appeal, to the Commission, support for the position taken or the relief requested.

(5) Capitalized Terms. Any capitalized terms used in 350 CMR 11.00 shall have the meanings ascribed to such terms in 350 CMR 11.03.

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### **11.03 Definitions**

Advisory Ruling means a ruling issued by the Division pursuant to 350 CMR 11.06(1).

Agriculture, Land in Agricultural Use and Normal Maintenance or Improvement of Land in Agricultural Use shall have the meanings ascribed to such terms in 310 CMR 10.04.

Alteration means:

- (a) draining, dumping, dredging, damming, discharging, excavating, filling or grading;
- (b) the erection, reconstruction or substantial expansion of any buildings or Structures;
- (c) the driving of pilings;
- (d) the construction or reconstruction or paving of roads and other ways;
- (e) the construction or reconstruction of utilities;
- (f) the changing of run-off characteristics;
- (g) the intercepting or diverting of ground waters, surface waters, reservoirs, tributaries, or aquifers; and
- (h) the installation or substantial expansion of drainage, sewage and water systems.

Applicability Decision means the written decision issued by the Division pursuant to 350 CMR 11.06(2)(e).

Aquifer means a geological formation, group of formations, or part of a formation in the Wachusett Watershed that is capable of yielding a significant amount of water to a well or spring, as determined by reference to the Maps, 350 CMR 11.07. The land directly overlaying an aquifer shall be deemed to be part of said aquifer.

Authority means the Massachusetts Water Resources Authority.

Bank means the portion of the land surface which normally abuts and confines a water body. It occurs between a water body and a Bordering Vegetated Wetland and adjacent Flood plain, or in the absence of these, it occurs between a water body and an upland. A bank may be partially or totally vegetated or may be comprised of exposed soil, gravel or stone. The upper boundary of a bank is the first observable break in the slope or the mean annual flood level, whichever is lower. The lower boundary of a bank is the mean annual low flow level.

Bordering Vegetated Wetland means a wet meadow, except meadows used for the grazing of livestock, marsh, swamp, bog or other area, hydrologically connected to and bordering on a Tributary, Reservoir, Flood plain, or Surface Water, which supports at least 50% wetland species and as defined in the Wetlands Protection Act as defined herein.

Commission means the Department of Conservation and Recreation.

Commonwealth means the Commonwealth of Massachusetts.

Date of Issuance means the date a determination, order or decision is hand delivered or mailed as provided in 350 CMR 11.00.

Date of Submission means the date the Division assigns a file number to a request or application submitted pursuant to 350 CMR 11.06. Assignment of a file number shall not imply that a request, application or supporting documents have been determined adequate to support the relief requested, but only that the submission is complete in accordance with the requirements of 350 CMR 11.06.

Department means the Department of Environmental Protection of the Commonwealth of Massachusetts.

Discharge or Discharge of Pollutant means any addition of Pollutants or combination of Pollutants from any source including, but not limited to, discharges from surface runoff, which are collected or channelled by man and through pipes, sewers or other conveyances.

Disposal means the discharge, deposit, injection, dumping, spilling, leaking, incineration or placing into or on any land or water so that the matter disposed of may enter the environment or be emitted into the air or discharged into any waters, including Ground water.

Division means the Division of Watershed Management of the Commission.

Dwelling means any structure or building, or any portion thereof which is used, intended to be used, or designed to be occupied for human habitation purposes, including, but not limited to, houses, hotels, motels, apartments and condominiums.

Exemption Decision means a decision of the Division, in consultation with the Department, to exempt a Tributary from regulation under St. 1992 c. 36 issued pursuant to 350 CMR 11.06(4)(g).

Flood plain means the land adjoining a Tributary, Reservoir or Surface Water, which is subject to inundation from a flood having a 1% chance of being equaled or exceeded in any given year, commonly known as the 100 year flood plain, as determined by reference to the Maps, 350 CMR 11.07.

Generate or Generation of Pollutants means the origination, creation or production of Pollutants.

Ground water means water below the land surface in a saturated zone, including perched ground water.

Hazardous Material or Waste means any material or waste, in whatever form, which because of its quantity, concentration, corrosivity, flammability, reactivity, toxicity, or infectious, chemical or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Hazardous Material or Waste shall include those materials listed in 40 CFR 261, or 310 CMR 40.900 Appendix I.

Impervious means not allowing entrance or passage of water due to the presence on or above the ground of material having a percolation rate of greater than 30 minutes per inch, including, but not limited to, pavement, concrete, stone, peat, loam and other organic matter.

Leaching Field means a soil absorption system as such term is defined in Title 5 (350 CMR 15.00).

List of Affected Parcels means the list developed by the Division from maps prepared pursuant to M.G.L. c. 92 § 107A(q).

Lot means an area of land subject to St. 1992 c. 36 in one ownership with definite boundaries described in a deed or shown on a plan recorded in the registry of deeds or registered in the registry district of the land court.

Maps means the maps described in 350 CMR 11.07.

Majority means more than half of the members of any body making a decision pursuant to 350 CMR 11.00.

Natural Basin means an area bounded peripherally by a water parting and draining ultimately to a particular water course or body of water; the catchment area or drainage basin from within which the waters of a stream or stream system are drawn.

Owning an Interest in Real Property or Real Property Interest means having alone, or jointly or severally with others:

- (a) legal title to real property;
- (b) the care, charge or control of real property in any capacity including, but not limited to as agent, executor, executrix, administrator, administratrix, trustee, or guardian of the estate of the holder of legal title;
- (c) lessee under a written lease; or
- (d) an agent, trustee or other person appointed by the Courts of the Commonwealth.

Papers means all requests, documents, papers, notices, appeals and other written communications permitted or required by the regulations to be filed with the Division or the Commission.

Party Aggrieved means any Person who, because of an act or failure to act by the Division or the Commission under St. 1992 c. 36 or 350 CMR 11.00, may suffer an injury in fact which is different, either in kind or magnitude, from that suffered by the general public, and which is within the scope of the interests identified in St. 1992 c. 36. Such party must specify, in writing, sufficient facts to allow the Division or the Commission to determine whether or not the party is, in fact, aggrieved.



Person means an individual, partnership, corporation, firm, association or group, including a city, town, county, the Commonwealth or other governmental unit owning property or carrying on an activity regulated by St. 1992 c. 36.

Plans means such data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the Division to describe the Lot, portion of the Lot or the Alteration to determine the applicability of St. 1992 c. 36 or to determine the impact of the Alteration upon the interests identified in St. 1992 c. 36.

Pollutant means any substance, man-made or resulting from human activities, that can alter the biological, chemical, physical, or radiological character of water.

Reservoir means either the Wachusett or the Quabbin Reservoir.

Sewage Treatment Facility means any wastewater treatment facility used for treating, neutralizing or stabilizing sewage, including: treatment or disposal plants; the necessary intercepting outfall and outlet sewers; pumping stations integral to such facilities; and equipment and appurtenances related to the foregoing.

Sewer System means pipelines or conduits, pumping stations, force mains, and all other structures, devices, appurtenances, and facilities used for collecting and conveying wastes to a site or works for treatment or disposal.

Storage means the actual or intended containment on a temporary basis or permanent basis which does not constitute Disposal.

Structure means a combination of materials assembled at a fixed location to give support or shelter, such as, but not limited to, a Dwelling, a building, framework, retaining wall, tent, reviewing stand, platform, bin, fence over six feet high, sign, flagpole, recreational tramway, mast for radio antenna or the like. The word "structure" shall be construed, where the context requires, as though followed by the words "or part or parts thereof."

Subsurface Waste Water Disposal System means an on-site subsurface sewage disposal system as defined in Title 5 (310 CMR 15.00).

Surface Water(s) means water in the Watersheds, including any lake, spring, impoundment, and pond, as determined by reference to the Maps, 350 CMR 11.07. Surface water shall include the land located thereunder and the Banks thereto. Surface water shall exclude all Reservoirs, Tributaries, Aquifers, Ground waters, and man-made farm ponds used for irrigation, as well as so-called great ponds of the Commonwealth which do not drain into a Tributary or a Reservoir.

Title 5 means Title 5 of the Massachusetts Environmental Code governing standard requirements for the siting, constructing, repair, replacement and maintenance of on-site sewage treatment and disposal systems, 310 CMR 15.00.

Treatment means any method, technique, or process, including neutralization, incineration, stabilization or solidification, designed to change the physical, chemical or biological character or composition of any Hazardous Material or

Waste so as to neutralize such Material or Waste or so as to render such Material or Waste less hazardous, non-hazardous, safer to transport, amenable to storage, or reduced in volume, except such method or technique as may be included as an integral part of a manufacturing process at the point of generation.

Tributary means a body of running water, including a river, stream, brook and creek, which moves in a definite channel in the ground due to a hydraulic gradient and which flows ultimately into a Reservoir in the Watersheds or the Ware River above the Ware River intake, as determined by reference to the Maps, 350 CMR 11.07. A Tributary shall include the land over which the water therein runs and the Banks thereto.

Uses and Activities means those uses and activities described in M.G.L. c. 92, § 107A(a) and (b)(2) and 350 CMR 11.04(3).

Variance Decision means the written decision issued by the Division pursuant to 350 CMR 11.06(3)(g).

Waters of the Watershed System means all waters that in their natural course would flow into the Ware River above the Colbrook Diversion, the open channel of the Wachusett Aqueduct, the Quabbin, Wachusett, Sudbury and Foss reservoirs and any other lake, pond, reservoir, aqueduct, stream, ditch, watercourse or any other open water under the provision of M.G.L. c. 92, § 109.

Watershed Reservation(s) means land within the Watershed System and described in St. 1972 c. 737 as amended by St. 1990 c. 436.

Watershed(s) means the Natural Basin from within which water drains or in the natural course would drain into the Quabbin Reservoir, the Wachusett Reservoir, or the Ware River upstream of the Ware River intake.

Watershed System means:

(a) all real and personal property interests held by or on behalf of the Commonwealth immediately prior to the effective date of St. 1992 c. 36 in and for the Department of Conservation and Recreation water system which were part of or appurtenant to the Quabbin Watershed, Quabbin Reservoir, Ware River Watershed, Wachusett Watershed, Wachusett Reservoir, North and South Sudbury watersheds, Sudbury Reservoir, Framingham Reservoirs 1, 2 and 3, Blue Hills Reservoir, Bear Hill Reservoir, Spot Pond Reservoir, Fells Reservoir, Weston Reservoir, Norumbega Reservoir, Chestnut Hill Reservoir, including land, easements, buildings, Structures, all equipment, machinery, vehicles and appliances, improvements, water rights and rights in source of water supply; and

(b) all enlargements and additions to the former Department of Conservation and Recreation water system acquired or constructed by the Division for the purpose of the Watershed System, including land, easements, buildings, Structures, equipment, machinery, vehicles, and appliances, improvements, reservoirs, dams, water rights and rights in sources of water supply, but excluding the Waterworks System of the Authority.

Waterworks System means waterworks system as defined in M.G.L. c. 92 App. and 360 CMR 10.00 et seq.

Wetlands Protection Act means the Wetlands Protection Act, M.G.L. c. 131, § 40 and regulations promulgated pursuant thereto, 310 CMR 10.00 et seq.

#### **11.04: Jurisdiction**

(1) Areas Regulated. Areas regulated by St. 1992 c. 36 and 350 CMR 11.00 include those portions of the Watersheds which lie:

- (a) within 400 feet of the Bank of a Reservoir;
- (b) within 200 feet of the Bank of a Tributary or Surface Waters;
- (c) within the area between 200 and 400 feet of the Bank of a Tributary or Surface Waters;
- (d) within the Flood plain of a Tributary or Surface Waters, including that flood plain;
- (e) within Bordering Vegetated Wetlands that border on Tributaries or Surface Waters or Reservoirs;
- (f) within land that overlays an Aquifer with a potential well yield of 100 gallons per minute or more as determined in accordance with St. 1992 c. 36 and 350 CMR 11.00; or
- (g) within land that overlays an Aquifer with a potential well yield of one or more but less than 100 gallons per minute pursuant to a finding by the Division, in consultation with the Department, that regulation of said Aquifer is necessary for the protection of the quality of the water in the Surface Waters, Aquifers, Reservoirs or Tributaries.

(2) Presumptions - Properties Identified in the List of Affected Parcels. For purposes of 350 CMR 11.00, all properties identified in the List of Affected Parcels shall be presumed to be in an area regulated under 350 CMR 11.04(1)(a) through (g). Any property which is not identified in the List of Affected Parcels shall be presumed not to be in an area regulated under 350 CMR 11.04(1)(a) through (f).

(3) Uses and Activities Regulated or Prohibited.

(a) Any Alteration, or the Generation, Storage, Disposal or Discharge of Pollutants is prohibited within those portions of the Watershed that lie:

- 1. within 400 feet of the Bank of a Reservoir (350 CMR 11.04(1)(a)); or
- 2. within 200 feet of the Bank of a Tributary or Surface Waters (350 CMR 11.04(1)(b)).

(b) 1. Within those portions of the Watershed that lie:

a. within the area between 200 and 400 feet of the Bank of a Tributary or Surface Water (350 CMR 11.04(1)(c));

b. within the Flood plain of a Tributary or Surface Water (350 CMR 11.04(1)(d));

c. within Bordering Vegetated Wetlands that border on Tributaries or Surface Waters or Reservoirs (350 CMR 11.04(1)(e));

d. within land that overlays an Aquifer with a potential well yield of 100 gallons per minute or more as determined in accordance with St. 1992 c. 36 and 350 CMR 11.00 (350 CMR 11.04(1)(f)); or

e. within land that overlays an Aquifer with a potential well yield of one or more but less than 100 gallons per minute, pursuant to a finding by the Division, in consultation with the Department, that regulation of said Aquifer is necessary for the protection of the quality of the water in the Surface Waters, Aquifers, Reservoirs or Tributaries (350 CMR 11.04(1)(g)),

2. the following uses are prohibited:

a. the Disposal of Pollutants from either privately or publicly owned Sewage Treatment Facilities;

b. the placement of the Leaching Field of a Subsurface Waste Water Disposal System less than four feet above the maximum water table level as measured at the time of annual high water;

c. the storage of liquid petroleum products of any kind; provided, however, that an end user of such product, such as a resident in connection with normal residential use or a person responsible for supplying heat to a residence, may store a reasonable volume of such material so long as such storage is in a free standing container inside of the Structure, which Structure shall include at a minimum a foundation thereof with a poured cement slab floor or a concrete reservoir of sufficient volume to hold 125 percent of the tank's capacity;

d. the Treatment, Disposal, use, generation or Storage of Hazardous Material or Waste, except a reasonable volume of Hazardous Material or Waste incidental to normal residential use;

e. the Storage and the Disposal of solid waste other than a reasonable volume incidental to normal residential use;

f. the outdoor Storage of road salt or other de-icing chemicals; provided, however, that 350 CMR 11.00 shall not prohibit the outdoor Storage of sand, gravel or materials used in road construction which are not Hazardous Materials or Waste;

g. the outdoor Storage of fertilizers, herbicides and pesticides;

h. the use or Storage of pesticides or herbicides which carry a mobility rating as provided for by the United States Environmental Protection Agency or which have been determined by the Commonwealth using United States Environmental Protection Agency standards to pose a threat or potential threat to Ground water;

i. the outdoor, uncovered Storage of manure;

j. the servicing, washing or repairing of boats or motor vehicles other than as reasonably incidental to normal residential use;

k. the operation of junk and salvage yards;

l. the rendering Impervious of more than ten percent of any Lot or 2,500 square feet, whichever is greater;

m. the excavation of gravel and sand to a depth greater than six feet above the maximum water table, except where incidental to the construction of permitted Structures;

n. the Alteration of Bordering Vegetated Wetlands;

o. any other activity which could degrade the quality of the water in the Watersheds as determined by the Division after consultation with the Department; provided, however, that de-icing may be performed on a roadway under procedures approved by the Commonwealth's Secretary of Environmental Affairs; or

p. the construction of any Dwelling which exceeds a density of two bedrooms per acre or any use which may generate more than 220 gallons of sanitary sewage per acre per day.

(c) In addition to, and without limiting, the prohibitions contained in 350 CMR 11.04(3)(a) and (3)(b), within those portions of the Watersheds which overlay Aquifers with potential well yields of between 100 and 300

gallons per minute as determined by the Division, or land whose regulation has been determined to be necessary for the protection of the quality of the water in the Surface Waters, Aquifers, Reservoirs and Tributaries, pursuant to 350 CMR 11.04(1)(g), the construction of any Dwelling which exceeds a density of one and one-third bedrooms per acre and any use which may generate more than 147 gallons of sanitary sewage per acre per day are prohibited.

(d) In addition to, and without limiting, the prohibitions contained in 350 CMR 11.04(3)(a), (3)(b) and (3)(c), within those portions of the Watersheds that overlay Aquifers with potential well yields of over 300 gallons per minute as determined by the Division, the construction of any Dwelling which exceeds a density of one bedroom per acre and any use which may generate more than 110 gallons of sanitary sewage per acre per day are prohibited.

(e) In making the calculation required under 350 CMR 11.04(3)(b)2.i. all contiguous real property within an area described in 350 CMR 11.04(1) owned by the same Person shall be used, in the aggregate; provided, however, that said area may be so used in making such calculation for only one Lot.

(f) In making the calculation required under 350 CMR 11.04(3)(b)2.p., all contiguous real property within an area described in 350 CMR 11.04(1) owned by the same Person shall be used, in the aggregate, to determine the total acreage for density purposes; provided, however, that said area may be so used for determining area density for only one Lot.

### **11.05: Exemptions**

The provisions of 350 CMR 11.04 shall not apply to the following:

(1) Uses, Structures or Facilities in Existence. Uses, Structures or facilities lawfully in existence or for which all applicable municipal, state and federal permits and approvals, other than building permits and permits for septic systems, were obtained prior to July 1, 1992;

(2) Reconstruction, Extension or Structural Change. Any reconstruction, extension or structural change to any Structure lawfully in existence on July 1, 1992, provided that such reconstruction, extension or structural change:

(a) does not constitute a substantial change to or enlargement of that lawfully existing Structure; and

(b) does not degrade the quality of the water in the Watershed;

(3) Lot in Existence. The construction of one single-family Dwelling on any Lot existing as such prior to July 1, 1992, or the division of an owner occupied Lot existing as such as of July 1, 1992 into one additional Lot for a single family dwelling; provided that, wherever possible, there shall be no Alterations within the areas described in 350 CMR 11.04(1)(a) and 11.04(1)(b);

(4) Construction - Sewer System. The construction of any Dwelling described in 350 CMR 11.04(3)(b)2.p., 11.04(3)(c) or 11.04(3)(d) if a Sewer System existed prior to July 1, 1992 to which a direct connection shall be made without expansion of capacity and said connection is used for all sanitary sewage of any Dwelling or other Structure resulting from said construction;

(5) Tributaries. Tributaries, or portions thereof, which the Division, in consultation with the Department, has exempted pursuant to 350 CMR 11.00, upon a determination that such exemption will pose no significant risk to the quality of the water, after taking into account the rate of flow, slope, soil characteristics, proximity to a Reservoir or the Ware River above the Ware River intake, the current level of water quality and the current degree of development;

(6) Work of the Division. The Division, in the performance of its responsibilities and duties to protect the quality of the water in the Watersheds, or the Authority in the performance of its responsibilities and duties to maintain, operate and improve the Waterworks System;

(7) Conversion of Land for Agricultural Use. Conversion of Land for Agricultural Use or preparation of Land for Agricultural Use; provided, however, that such conversion shall be made under a plan approved by the United States Department of Agriculture, Soil Conservation Service and the Commission, in consultation with the Commonwealth's Department of Food and Agriculture;

(8) Maintenance of Public Roadways in Existence. The maintenance, repair, replacement or reconstruction of public roadways existing as of September 1, 1989 or railroad track and rail bed existing as of September 1, 1990, including associated drainage systems, that are necessary to preserve or restore the facility's serviceability for the number of travel lanes and uses existing as of September 1, 1990; provided, however, that in the case of any replacement the design is substantially the functional equivalent of, and is of similar alignments to that which is being replaced; provided, further, that design plans and specifications for said work on roadways, or railroad track and rail beds are provided to the Division prior to the work's commencement;

(9) Maintenance or Improvement - Agricultural. Activities relating to normal maintenance or improvement of Land in Agricultural Use; provided, however, that such activities do not impair the quality of the water;

(10) Construction of Public Highways. The construction of public highways, railroad track and rail beds and facilities directly related to their operation; provided, that the Commonwealth's Secretary of Environmental Affairs has determined that such highway or transportation service construction project requires direct access to or location in the lands described in 350 CMR 11.04(1) to avoid or minimize damages to the environment and that said Secretary and the Division have determined that such construction does not materially impair the quality of the water in the Watersheds;

(11) Maintenance of Public Utilities. The maintenance, repair or expansion of lawfully located Structures or facilities used in the service of the public to provide electric, gas, water, sewer, telephone, telegraph and other telecommunication services; provided, however, that such maintenance, repair or expansion activities, Structures, or facilities do not materially impair the quality of water in

the Watersheds as determined by the Division after consultation with the Department;

(12) Maintenance of Public Utilities - Wetlands. The maintenance, repair or replacement, but not the substantial changing or enlargement of, an existing and lawfully located Structure or facility used in the service of the public and used to provide electric, gas, water, sewer, telephone, telegraph and other telecommunication services in Bordering Vegetated Wetlands; provided, however, that such maintenance and repair activities do not materially impair the quality of water in the Watersheds;

(13) Clean up or Prevention of Releases. The undertaking by any Person, municipality, the United States government or the Commonwealth of temporary operations to clean up, prevent or mitigate releases of Hazardous Material or Waste;

(14) Changes in Agricultural Crops Produced. Changes in agricultural crops produced;

(15) Agricultural Technologies. The use of new or existing agricultural technologies that do not degrade the quality of water in the Watersheds more than the present agricultural technologies that such new or existing agricultural technologies replace; and

(16) Municipal Sewage Treatment Facility or Water System. The construction of a new municipal Sewage Treatment Facility or new municipal water system if the Division determines that water quality will not be adversely impacted from said construction and provided that such new systems comply with all existing regulations and standards applicable to water pollution abatement districts.

## **11.06: Procedures**

### **(1) Advisory Rulings**

(a) *Request for Advisory Ruling*. Any person Owning an Interest in Real Property may, by written request to the Division at the addresses specified in 350 CMR 11.11 by certified mail or hand delivery, request an Advisory Ruling as to:

1. whether such Person's property is located within an area regulated by St. 1992 c. 36 or 350 CMR 11.00; or
2. whether existing or proposed Structures, Uses or Activities on such Person's property are permitted under St. 1992 c. 36 or 350 CMR 11.00 by virtue of the exemptions set forth in 350 CMR 11.05.

(b) *Information Required*. Such written request shall identify the property by street address and include:

1. a copy of the current Assessor's Map showing the location of the property or reference to the applicable Assessor's Map by sheet and parcel number;



2. a copy of (or reference to) the most recent edition of the Massachusetts Geographic Information System map based on the United States Geological Survey, 1 to 25,000 scale, quadrangle maps, showing the location of the property;

3. a copy of such Owner's deed as recorded in the applicable registry of deeds; and

4. copies of any plans, mortgage inspection plans and tape surveys of the property which are available.

(c) *Issuance of Advisory Ruling.* Within 30 days of the Date of Submission of a request for Advisory Ruling, the Division may issue a written ruling to the Person who submitted the request, or in its sole discretion, the Division may notify such Person that a request for Watershed determination of applicability is required pursuant to 350 CMR 11.06(2).

(d) *Remedy.* The Person to whom an Advisory Ruling is issued shall have no right to appeal such ruling, but may at such Person's election, submit a request for Watershed determination of applicability or an application for variance in accordance with 350 CMR 11.00. A Person who has not been issued an Advisory Ruling within 30 days may, at such Person's election, resubmit the request, or submit a request for Watershed Determination of Applicability or an application for variance in accordance with 350 CMR 11.06.

(e) *Authorization; limitations.* Any Advisory Ruling hereunder shall be issued by the Division pursuant to and subject to the limitations of M.G.L. c. 30A, § 8.

## (2) Requests for Watershed Determinations of Applicability

(a) *Filing.* Any Person Owning an Interest in Real Property who desires a determination as to whether or not:

1. such Person's property is located within an area regulated by St. 1992 c. 36 or 350 CMR 11.00;

2. proposed Structures, Uses or Activities on such Person's property are permitted under St. 1992 c. 36 or 350 CMR 11.00;

3. a reconstruction, extension or structural change constitutes a substantial change or enlargement or one which will degrade the quality of water under 350 CMR 11.05(2);

4. Alterations within areas described in 350 CMR 11.04(1)(a) and 11.04(1)(b) in connection with construction permitted under 350 CMR 11.05(3) are possible;

5. the maintenance, repair or replacement activities described in 350 CMR 11.05(9), (10) or (11) will impair or materially impair the quality of the water in the Watersheds; or

6. a new municipal Sewage Treatment Facility or new municipal water system will have an adverse impact on water quality under 350 CMR 11.05(16),

may submit to the superintendent of the Reservoir of the Watershed in which such property is located at the address specified in 350 CMR 11.11, by certified mail or hand delivery, a request for Watershed determination of applicability (See 350 CMR 11.13).

(b) *Land Surveyor Determination.* Any request for Determination under 350 CMR 11.06(2)(a)1. shall be accompanied by a written determination of a land surveyor registered with the board of registration of professional engineers and land surveyors of the Commonwealth as to whether such Person's real property interests are located within areas regulated by St. 1992 c. 36.

(c) *Related Statement.* Requests for Watershed Determinations other than those in 350 CMR 11.06(2)(a)1. shall include a detailed description of the Structures, Uses and Activities which are proposed.

(d) *Additional Materials.* All surveys and additional materials or studies required to make a determination, whether or not requested by the Division, shall be prepared and delivered at the sole cost of the Person desiring the determination.

(e) *Issuance of Applicability Decision.* Within 60 days of the Date of Submission of such request for Watershed Determination, the Division shall issue a written Applicability Decision to the Person who submitted such request, in form suitable for recording in the registry of deeds or registration in the registry district of the land court where the property is located (See 350 CMR 11.13), which shall contain a brief statement of the reasons for the Decision. If the Division fails to issue the Applicability Decision within such 60 day period, the Division shall be deemed to have:

1. concurred with the land surveyor's determination set forth in a request for Determination under 350 CMR 11.06(2)(a)1.; or

2. determined that the proposed Structures, Uses and Activities on such Person's property described in the request for Determination are permitted by St. 1992 c. 36 and 350 CMR 11.00; or

3. determined that such Structures, Uses and Activities will not impair or materially impair the quality of water in the Watersheds.

(f) *Appeal*. A Person to whom the Division's Applicability Decision has been issued, who seeks to appeal such Decision, shall file a Notice of Claim for an Adjudicatory Proceeding with the Commission at the address specified in 350 CMR 11.11 within 21 days from the Date of Issuance of the Decision by the Division. The procedures for appeal before the Commission shall be as set forth in 801 CMR 1.00 et seq. At the time of filing of such Notice of Claim, a copy shall also be filed with the Division.

### (3) Variances

(a) *Variances*. The Division may grant a variance from the provisions of St. 1992 c. 36 and 350 CMR 11.00 with respect to particular Structures, Uses and Activities, and shall grant, upon request, a variance with respect to crossings of Tributaries and Bordering Vegetated Wetlands, where the Division specifically finds that owing to circumstances relating to the soil conditions, slope, or topography of the land affected by such Structures, Uses or Activities, desirable relief may be granted without substantial detriment to the public good and without impairing the quality of water in the Watersheds.

(b) *Presumptions and Standards for Required Findings*.

1. There shall be a presumption that granting a variance from the applicability of St. 1992 c. 36 and 350 CMR 11.00 to specific Structures, Uses and Activities is contrary to the achievement of the purpose of St. 1992 c. 36. This presumption may be rebutted only by the submission of credible evidence by the Person submitting the application for variance to establish that such variance may be granted without substantial detriment to the public good and without impairment of water quality in the Watersheds.

2. The standard of substantial detriment to the public good shall mean a factual determination by the Division of the overall effect of the proposed Structure, Use or Activity at a particular location in relation to the purpose of St. 1992 c. 36.

3. The standard of impairment of water quality shall mean:

- a. the risk of water quality impairment presented by Structures, Uses and Activities which are permissible under all other relevant federal, state and local laws, but would not be permissible under 350 CMR 11.00 without a variance; and

- b. the cumulative risk of water quality impairment from all Structures, Uses and Activities allowed under current regulations over time.

(c) *Applications.* Any Person Owning an Interest in Real Property may make an application for variance to the Division (See 350 CMR 11.13) by filing the same by certified mail or hand delivery with the Division at the address specified in 350 CMR 11.11. A copy of the application for Variance shall be sent to the Department at the address specified in 350 CMR 11.11.

(d) *Detailed Statement.* The application for variance shall include a detailed description of the Structures, Uses and Activities proposed on such Person's property. The application for variance shall include detailed information regarding each specifically enumerated factor stated in 350 CMR 11.06(3)(a). Detailed information regarding each factor shall be provided as follows:

1. *Soil Conditions.* A map prepared at a minimum scale of 1"=100' indicating the soil types as mapped by the USDA Soil Conservation Service ("SCS") shall be provided. Site specific soils data, including borings, test pits and percolation tests, may be submitted including copies of all field logs, notes, observations, conclusions and test methods employed. A detailed analysis of the soil characteristics of erodibility and permeability shall be provided. Permeability should be described in terms of percolation rate measured as minutes per inch as specified in Title 5 (310 CMR 15.00).

2. *Slope.* Calculations of the ground slope at all lands within the areas that would be subject to St. 1992 c. 36 if the variance were not granted shall be provided. The results of such calculations shall be presented graphically on a map prepared at a scale of 1"=100' or larger, expressed as percent slope. Where applicable, the average slope of a Tributary measured as the change in elevation divided by the distance in stream miles from the upstream point of the Tributary at or near such Person's property to the downstream point of the Tributary at or near such Person's property shall also be stated.

3. *Topography.* A topographical plan at a minimum scale of 1"=100' or larger showing contour elevations at two foot intervals shall be submitted. Said plan shall be prepared and stamped by a professional surveyor or engineer registered in the Commonwealth of Massachusetts and shall show the location of all areas which would be subject to St. 1992 c. 36 if the variance were not granted. The plan shall show the location of all Ground water, soil and percolation test locations. Such topographic information as depth to the maximum annual high Ground water table, depth to ledge or refusal, and distances from all mapped and unmapped streams, ponds and water bodies shall also be provided.

4. *Water Quality.* The application shall include a detailed analysis of the impacts on Surface Water and, where

applicable, Ground water quality of any proposed Structure, Use or Activity which would be allowed if the variance is granted. An evaluation of the potential impact of such proposed Structure, Use or Activity on water quality by reference to the Department's Surface Water Quality Standards for Class A Surface Waters and Outstanding Resource Waters of the Commonwealth, set forth in 314 CMR 4.00 et seq., and/or where applicable, the Massachusetts Ground Water Quality Standards, set forth in 314 CMR 6.00 et seq. shall be provided. The application shall include the water quality data and results to support each analysis and shall provide a detailed description of any methodology employed in performing such analysis to show that water quality will not be impaired by the Structure, Use and Activity for which the variance is being requested, whether during construction or upon continued use or operation of such Structure, Use or Activity.

5. *Mitigating Measures.* The application shall include an analysis of any mitigating measures which will be used which would enable the Division to grant a variance without substantial detriment to the public good and without impairing the quality of water in the Watersheds.

(e) *Additional Materials.* All surveys and additional materials or studies required to act on an application for variance, whether or not requested by the Division, shall be prepared and delivered at the sole cost of the Person submitting the application.

(f) *Public Hearing.* Within 30 days of the Date of Submission of the application for variance with the Division, the Division shall hold a public hearing. Notice of the time and place of the public hearing shall be given by the Division, at the expense of the Person who submitted the application, not less than five days prior to such hearing by publication in a newspaper of general circulation in the city or town where the property in question is located and by mailing a copy of such notice to the Person who submitted the application at the address specified in the application, and to the Building Inspector, Conservation Commission, and Board of Health in such city or town. At the request of the Person who submitted the application filed with the Division at least two days before the date of such hearing, the date of the hearing may be rescheduled to a time which is mutually convenient for such Person and the Division, provided that such rescheduled time shall permit re-publication of notice as provided herein.

The public hearing may be continued, with the consent of the Person who submitted the application, to an agreed upon date, which shall be announced at the hearing. At the public hearing, such Person may be represented by counsel and/or professional consultants and may present oral or written evidence and oral or written testimony of witnesses.

(g) *Variance Decision.* Within 30 days of the close of the public hearing, the Division shall issue a written Variance Decision on the application for variance. If the variance is granted, the Division may impose in the

Variance Decision such reasonable conditions, safeguards and limitations as it may find desirable in its sole discretion, which, based on the application for variance and the evidence presented at the public hearing, are necessary to protect the water in the Watersheds. If a variance is denied, the Variance Decision shall contain a brief statement of the reasons for the denial. The granting of a variance is limited to the provisions of St. 1992 c. 36. All other applicable laws, regulations and ordinances shall not be affected by the granting of a variance.

(h) *Recording of Variance Decision.* No variance granted hereunder shall take effect until a Variance Decision (See 350 CMR 11.13) shall have been recorded and indexed in the grantor index in the registry of deeds or registered in the registry district of the land court for the county or district where the property is located, containing any conditions applicable thereto and describing the land by metes and bounds or by reference to a recorded or registered plan showing the property's boundaries.

(i) *Appeal.* A Person to whom a Variance Decision is issued, who seeks to appeal the Division's Variance Decision, shall file a Notice of Claim for an Adjudicatory Proceeding with the Commission at the address specified in 350 CMR 11.11 within 21 days from the Date of Issuance of the Variance Decision by the Division. The procedures for appeal before the Commission shall be as set forth in 801 CMR 1.00 et seq. At the time of filing of such Notice of Claim, a copy shall also be filed with the Division.

#### (4) Exemption of a Tributary

(a) *Exemption of a Tributary.* The Division, in consultation with the Department, may exempt a Tributary, or portions thereof, upon a determination that such exemption will pose no significant risk to the quality of water, after taking into account the following factors:

1. rate of flow;
2. slope;
3. soil characteristics;
4. proximity to a Reservoir or the Ware River above the Ware River intake;
5. the current level of water quality; and
6. the current degree of development.

(b) *Presumptions and Standards for Required Findings.*

1. The standard of no significant risk to the quality of water refers to:

a. the risk of water quality impairment presented by Structures, Uses and Activities which are permissible under all other relevant state, federal and local laws, but would not be permissible under 350 CMR 11.00 without an exemption; and

b. the cumulative risk of water quality impairment from all Structures, Uses and Activities allowed under current regulations over time.

2. There shall be a presumption that exempting a Tributary or portion thereof is contrary to the achievement of the purpose of St. 1992 c. 36. The presumption may be rebutted only by the submission of credible evidence by the Person submitting the request for Exemption to establish that such exemption will pose no significant risk to the quality of water, taking into account the factors enumerated at 350 CMR 11.06(4)(a).

*(c) Requests for Exemption.*

1. A request for Exemption of a Tributary may be made by:

a. An affected landowner;

b. Any state agency or regional planning commission;

c. The Board of Selectmen, City Council, Mayor, Planning Board or Conservation Commission of any city or town which would be affected by the exemption; or

d. The Governor or any member of the General Court.

2. A request for Exemption of a Tributary shall be made to the Division (See 350 CMR 11.13) by filing the same by certified mail or hand delivery with the Division at the address specified in 350 CMR 11.11. A copy of the request for Exemption of a Tributary shall be sent to the Department at the address specified in 350 CMR 11.11.

*(d) Detailed Statement.* The request for Exemption of a Tributary shall include detailed information regarding each specifically enumerated factor listed in 350 CMR 11.06(4)(a)1. through 6. Such detailed information shall be provided based on conditions existing as of the time of the request and based on conditions which would, or may, result if such exemption were granted and if development occurred to the maximum extent and type allowed by current law. Detailed information on each factor shall be provided as follows:

1. *Flow Rate.* The request shall include the flow rate of the Tributary stated as the annual average daily stream flow, reported as cubic feet per second ("cfs") as

measured at the downstream point of discharge for the Tributary or portion thereof, taking into account the entire contributing drainage area. Such flow rate may be based on field data collected in accordance with accepted stream flow measurement methods as established by the United States Geologic Survey, or estimated based on procedures established by the United States Geologic Survey. The request shall describe, in depth, the basis and method employed for the reported flow rate to assess full build-out scenarios.

2. *Slope.* The request shall state the average slope at the Tributary measured as the change in elevation divided by the distance in stream miles from its source to the downstream point of discharge. The ground slope of all lands adjacent to the Tributary within the areas that would be subject to St. 1992 c. 36 if the exemption were not granted shall be calculated and the results of such calculations shall be presented graphically on a map prepared at a scale of 1"=100' or larger, expressed as percent slope.

3. *Soil Characteristics.* A map prepared at a minimum scale of 1"=100' shall be submitted indicating the soil types as mapped by the SCS. Site specific soils data supporting or contradicting the SCS soil mapping including borings, test pits and percolation tests may be submitted including copies of all field logs, notes, observations, conclusions and test methods employed. A detailed analysis of the soil characteristics of erodibility and permeability shall be provided. Permeability should be described in terms of a percolation rate measured as minutes per inch as specified in Title 5 (310 CMR 15.00).

4. *Proximity to a Reservoir or the Ware River above the Ware River Watershed.* Proximity of the Tributary proposed to be exempted to a Reservoir or the Ware River above the Ware River intake shall be indicated by reference to the Protection Zone, defined by the Department's Division of Water Supply, Watershed Resource Protection Plan Policy as Zone A, Zone B and Zone C. The measured distance in stream miles from the downstream discharge point of the Tributary or portion thereof in question from that Tributary's ultimate point of confluence with a Reservoir or stream miles above the Ware River intake shall be stated.

5. *Water Quality.* The request shall include water quality monitoring data for the Tributary consisting of, at a minimum, monthly samples for a continuous one year period at a sampling station located at or near the downstream point of discharge of the Tributary or portion thereof for which exemption is requested. Water quality data of the Division and the Department may be utilized in satisfaction of this requirement where such data is



available. Minimum analysis shall include fecal coliform bacteria, color, turbidity, temperature, pH, dissolved oxygen, total suspended solids, total phosphorus, ammonia nitrogen and chloride. A detailed analysis of the water quality data with reference to the Department's Surface Water Quality Standards for Class A Surface Waters and Outstanding Resource Waters of the Commonwealth, 314 CMR 4.00 et seq.,

shall be provided. The request shall include a detailed analysis of the impact on water quality of any potential Structures, Uses or Activities allowed if the exemption is granted.

6. *Development.* A general plan showing existing land use within the contributing drainage area upstream at the point of discharge of the Tributary or portion thereof shall be provided. The request shall include a calculation of the percent imperviousness of the contributing drainage area based on the existing land uses shown and shall indicate the change of percent imperviousness which may result from any Structures, Uses or Activities allowed or proposed if the exemption is granted.

7. *Other Information.* The request shall include a detailed description of the Structures, Uses and Activities which are or may be proposed to occur within those areas which would be subject to St. 1992 c. 36 without the exemption and shall include an analysis of any mitigating measures which will be used which would ensure that granting the exemption would present no substantial risk to the quality of water.

(e) *Additional Materials.* All surveys and additional materials or studies required to act on a request for Exemption of a Tributary, whether or not requested by the Division, shall be prepared and delivered at the sole cost of the Person submitting the request.

(f) *Public Hearing.* Within 30 days of the Date of Submission of the request for Exemption of a Tributary with the Division and the Department, the Division and the Department shall hold a public hearing. Notice of the time and place of the public hearing shall be given by the Division, at the expense of the Person who submitted the request, not less than five days prior to such hearing by publication in a newspaper of general circulation in the city or town where the property in question is located and by mailing a copy of such notice to the Person who submitted the request at the address specified in the request, and to the Building Inspector, Conservation Commission and Board of Health in such city or town. At the request of the Person who submitted the request filed with the Division at least two days before the date of such hearing, the date of the hearing may be rescheduled to a time which is mutually convenient for such Person, the Division and the Department, provided that such rescheduled time shall permit re-publication of notice as provided herein. The public hearing may be continued, with the consent of the Person who submitted the request, to an agreed upon

date, which shall be announced at the hearing. At the public hearing, such Person may be represented by counsel and/or professional consultants and may present oral or written evidence and oral or written testimony of witnesses.

(g) *Exemption Decision.* Within 60 days of the close of the public hearing, the Division shall issue a written Exemption Decision on the request for Exemption of a Tributary. If the exemption is granted, the Division may impose in the Exemption Decision such reasonable conditions, safeguards and limitations as it may find desirable in its sole discretion, which, based on the request for Exemption of a Tributary and the evidence presented at the public hearing, are necessary to protect the water in the Watersheds. If the exemption is denied, the Exemption Decision shall contain a brief statement of the reasons for the denial. The granting of an exemption is limited to the applicability of St. 1992 c. 36. All other applicable laws, regulations and ordinances shall not be affected by the granting of an exemption.

(h) *Notice of Exemption.* Notice of the Exemption Decision shall be mailed to the Person who submitted the request, and to the City Council or Board of Selectmen in the city or town where the Tributary is located. Notice shall also be published once in a newspaper of general circulation in such city or town, provided, however, that a failure to publish shall not affect the validity of the Exemption Decision. A record of the Exemption Decision shall be kept on file with the Division and, if a Tributary or portion thereof is exempted, the affected area shall be shown on the most recent edition of the Massachusetts Geographic Information System Map (See 350 CMR 11.07).

(i) *Appeal.* A Person to whom an Exemption Decision is issued, who seeks to appeal the Division's Exemption Decision, shall file a Notice of Claim for an Adjudicatory Proceeding with the Commission at the address specified in 350 CMR 11.11 within 21 days from the Date of Issuance of the Exemption Decision by the Division. The procedures for appeal before the Commission shall be as set forth in 801 CMR 1.00 et seq. At the time of filing of such Notice of Claim, a copy shall also be filed with the Division.

(5) Work Pending Appeal of Applicability Decision, Variance Decision or Exemption Decision - No Alterations shall be made or Structures, Uses or Activities commenced until a final administrative or judicial determination has been made and all appeal periods shall have expired if the Division issues:

(a) an Applicability Decision that the property is located in an area regulated by St. 1992 c. 36, that the Structures, Uses or Activities proposed are prohibited by St. 1992 c. 36 under 350 CMR 11.04(3), or that the Structures, Uses or Activities will impair or materially impair the quality of water in the Watersheds; or

(b) a Variance Decision denying the variance requested in an application for variance; or

(c) an Exemption Decision denying a request for Exemption of a Tributary.

#### **11.07: Maps**

(1) Aquifers. The location and potential well yield of Aquifers shall be determined by reference to the most recent edition of maps generated by the Massachusetts Geographic Information System based on the United States Geological Survey Water Resource Atlases.

(2) Flood plains. The location of Flood plains shall be made by reference to the most recent edition of the Flood Hazard Boundary Maps issued by the Federal Emergency Management Agency.

(3) Surface Waters and Tributaries. The location of Surface Waters and Tributaries shall be determined by reference to the most recent edition of maps generated by the Massachusetts Geographic Information System based on the United States Geological Survey, 1 to 25,000 scale quadrangle maps.

(4) Adoption of More Accurate Maps. With respect to any of the maps referred to in 350 CMR 11.07, the Division, in consultation with the Department, may adopt more accurate maps pursuant to notice and a public hearing as provided by M.G.L. c. 30A. The Division shall file any of such maps which are adopted with the Clerk of the House of Representatives and Clerk of the Senate and such maps shall not take effect until 90 days have elapsed from the time of said filing. Copies of maps which have taken effect shall be filed with the Chief Executive Officers of all cities and towns within the Watersheds, provided that the Division's failure to do so shall not invalidate the maps or any actions taken by the Division in connection therewith.

#### **11.08: Relationship of Act with other State and Municipal Statutes, Ordinances and Regulations**

350 CMR 11.00 is intended solely for use in administering St. 1992 c. 36; nothing contained herein should be construed as preempting or precluding more stringent protection of the areas regulated by St. 1992 c. 36 by other statutes, ordinances, by-laws or regulations. The duties and obligations imposed by St. 1992 c. 36 shall be in addition to all other duties and obligations imposed by any general or special law or regulation or any by-law, ordinance or regulation lawfully adopted pursuant thereto.

#### **11.09: General Rules and Regulations for the Protection of Watersheds and the Watershed System**

In order to facilitate review of all regulations promulgated by the Commission and the Division relating to Watersheds and the Watershed System, this Section includes regulations of general applicability to Waters of the Watershed System. The regulations in 350 CMR 11.09 are intended to supersede the regulations in 310 CMR 23.00, 350 CMR 8.01, 350 CMR 9.00, and 350 CMR 10.00.

(1) Waters of the Watershed System.

(a) No Person shall take or divert any Waters of the Watershed System of the Commission and no Person shall corrupt, render impure, waste or improperly use any such water.

(b) No Person shall:

1. engage in any construction activity involving filling, dredging, grubbing or altering land without adequate provisions to prevent erosion resulting in clay, silt or other turbidity laden waters from entering the Waters of the Watershed System;

2. construct, establish or maintain any agricultural facility or place where animal manure may be deposited or accumulated without adequate provision to prevent any manure or other Pollutant from flowing or being washed into the Waters of the Watershed System;

3. engage in any other activity which could degrade the quality of Waters of the Watershed System or interfere with their use as a source of water supply.

(c) No Person shall allow a condition to exist on such Person's property which could result in the direct or ultimate discharge of any Pollutant into the Waters of the Watershed System.

(d) Any records of any board of health or health agent concerning matters within the Watershed shall be open to inspection by the employees and agents of the Commission and the Department.

(e) Whenever an incident occurs, is likely to occur, or a situation exists that threatens to add Pollutants to the Waters of the Watershed System, the Person causing or contributing to the pollution or potential pollution shall notify the Commission and the Department immediately.

(2) Watershed System.

(a) General Regulations.

1. Entrance on and exit from land of the Watershed System shall be made through gates or other designated areas.

2. No Person is allowed within any land of the Watershed System, except from one hour before sunrise to one hour after sunset, unless authorized by a written permit from the Commission or its designee.

3. Powered boats are prohibited within the Waters of the Watershed System except in areas designated by the Commission or its designee.

4. All acts which pollute or may pollute the water supply are prohibited. No litter or refuse of any sort may be thrown or left in or on any land or water within any Watershed System. All Persons within said System shall use the sanitary facilities provided for public use.

5. All acts which injure the property of the Commonwealth are prohibited. No Person shall injure, deface, destroy, remove or carry off any property, real or personal, under the care and control of the Commission, including but not limited to, all historic artifacts and natural materials. The removal of gravel, topsoil, stones, boulders, or other earthen material is prohibited from the Watershed System except for removal for official use for land management purposes by Commission staff. No Person shall build or construct any object or structure of the property of the Commonwealth except with the written permission of the Commission or its designee.

6. Cooking and all fires are prohibited within the Watershed System.

7. No Person shall wade or swim in any reservoir except wading while using boots for the purpose of launching boats at designated boat launch areas.

8. No Person shall wade or swim in any Tributary or Surface Waters on or within the property of the Commonwealth except at areas designated by the Commission or its designee.

9. Organized sports activities, including but not limited to orienteering and baseball, are prohibited in the Watershed System except by written permit from the Commission or its designee.

10. Any violation of 350 CMR 11.09 will be deemed sufficient cause for revocation of fishing privileges for a period of time not less than one year from the time of violation. The Commission and its employees are not responsible for any damage to or loss of property sustained by fishermen, or for any injury or loss of life which may be incurred in connection with public use of the reservoirs and Watershed System.

11. Breach of peace, profanity or other disorderly conduct offensive to the general public is strictly prohibited within the Watershed system. Possession of and drinking of alcoholic beverages is prohibited within said System.

12. No Person shall drive a motorized vehicle within the Watershed System except upon roads authorized for such use by the Commission or its designee.

Recreational vehicles are prohibited on all Watershed System property except the use of snowmobiles in areas designated by the Commission or its designee. Motor vehicles shall be parked only in areas designated by the Commission or its designee. Operators of motor vehicles shall obey all regulatory signs unless otherwise directed by a police officer or person in charge. No Person shall willfully obstruct the free passage of vehicles or Persons within the Watershed System. Vehicle access for official use may be granted by the Commission or its designee.

13. No Person shall bring any animal within any Watershed System property except for horses and dogs at the Ware River Watershed at areas designated by the Commission or its designee.

14. The use of bicycles, skis and other means of non-motorized transportation within the Watershed system shall be permitted only in areas designated by the Commission or its designee.

15. No Person, except in an emergency, shall bring, land or cause to descend within any Watershed System property any aircraft except with a written permit from the Commission or its designee.

16. Parades, games, fairs, carnivals, fishing derbies, bazaars, gifts or solicitations for raising or collecting funds shall not be permitted within the Watershed System without written approval of the Commission or its designee.

17. Lotteries, raffles, gambling and games of chance are prohibited; and no Person shall have possession of machinery, instruments or equipment of any kind for use of same in the Watershed System.

18. Public assemblies of more than 25 persons shall not be allowed within the Watershed System without a written permit from the Commission or its designee.

19. No Person shall engage in any business, sale or display of goods or wares within the Watershed System without a written permit from the Commission or its designee.

20. Commercial signs and advertising are prohibited in the Watershed System.

21. No Person shall have possession of or discharge any weapon, firearm, fireworks, or other explosive on or within the Watershed System except at times and areas designated by the Commission or its designee. All forms

of target shooting are prohibited on or within the Watershed System.

22. No Person may hunt, shoot or trap animals on or within any Watershed System property except at times and in areas designated by the Commission or its designee.

23. All Persons within the Watershed System shall obey the lawful directions of regulatory signs, police officers or persons in charge, or of Federal or Commonwealth wardens or enforcement officers.

24. The Watershed System or parts thereof may be closed for public access at the discretion of the Commission or its designee when necessary to protect the lands and waters under the care and control of the Commission.

25. The possession of all types of metal detectors or similar devices is prohibited on all of the Watershed System property.

(b) Special Regulations for Quabbin Reservoir.

1. Persons in compliance with Commonwealth Fish and Game Laws and Regulations, will be allowed to fish from shore in areas designated by the Commission or its designee. A valid state fishing or sporting license is required by any Person renting or launching a boat at any Commission facilities subject to 350 CMR 11.09. Reasonable fees for the use of boats, for rental of outboard motors for fishing purposes, or use of Commission facilities including parking and boat ramps, may be charged by the Commission.

2. Persons permitted to fish from boats shall, at all times, be responsible for the sanitary condition of the boats. Persons under 16 years of age must be accompanied by a Person possessing a valid fishing license in order to boat on Quabbin Reservoir.

3. Only boats of a minimum length of 12 feet, and of a type considered safe by the Commission representative in charge, shall be used. No inboard motors, collapsible boats, sailboats, pontoon boats, square sterned canoes, or other similar craft will be permitted in the water, and no boats will be permitted in the water except in areas designated for boating by the Commission or its designee. Outboard motors shall have a rating of not more than one-half the BIA or OBC rated horsepower for the boat and shall not exceed 20 horsepower, except that outboard motors for Commission boats less than fourteen 14 feet six inches in length shall not exceed ten

horsepower. Boats less than 14 feet six inches in length will be limited to three occupants, and boats of that length and in excess thereof may be licensed to carry four occupants. No boats shall carry more than four occupants. Canoes and jon boats of a minimum length of 12 feet, and of a type considered safe by the Commission representative in charge, shall be used and only in areas designated for boating by the Commission on Pottapaug Pond above the regulating dam and at Gate 31 above the regulating dam. Canoes less than 16 feet and jon boats less than 14 feet six inches in length will be limited to two occupants, and canoes and jon boats in excess thereof may be licensed to carry three occupants. All boats must be in compliance with current Commonwealth Boating Laws. All boats must be clean and contain no refuse of any kind. Commission personnel shall have the right to inspect all private boats launched at Commonwealth facilities and may deny access in order to protect water quality or the safety of occupants. Chock blocks must be used on vehicles when removing boats from the Reservoir.

4. No Person shall operate a motor boat at a speed other than reasonable and proper or in such a manner as to annoy or endanger the occupants of other boats.

5. Fishing from the shorelines of the Quabbin Reservoir and its Tributaries within the Watershed System or from boats shall be allowed only during a season designated by the Commission or its designee. All privately-owned boats, motors and other equipment must be removed from the property of the Commission each day.

6. Boats shall not leave the mooring areas before dawn, and must return at the time posted at each mooring area. The beaching of boats at any point except at the designated mooring and landing areas is strictly prohibited, except in cases of extreme emergency.

(c) Special Regulations for Ware River.

1. Persons in compliance with Commonwealth Fish and Game Laws and Regulations will be allowed to fish in the Ware River in areas designated by the Commission or its designee.

2. Powered boats and powered canoes are prohibited within the Ware River Watershed Reservation.

(d) Special Regulations for Wachusett Reservoir.

1. Persons in compliance with Commonwealth Fish and Game Laws and Regulations will be allowed to fish from



the shore of Wachusett Reservoir in areas designated by the Commission or its designee.

2. Boating is prohibited in Wachusett Reservoir.

3. Fishing from the shoreline of the Reservoir shall be allowed only during a season designated by the Commission or its designee.

(e) Special Regulations for Sudbury Reservoir.

1. Persons in compliance with Commonwealth Fish and Game Laws and Regulations will be allowed to fish from the shore of Sudbury Reservoir in areas designated by the Commission or its designee.

2. Boating is prohibited on Sudbury Reservoir except in areas designated by the Commission or its designee.

**11.10: Enforcement**

Any Person who, without lawful authority, takes or diverts any Waters of the Watershed System or corrupts or defiles any such Waters or any source of such Waters or who violates and refuses to comply with any rule, regulation or order of the Commission shall be subject to the fines set forth in M.G.L. c. 92, § 111. The provisions of 350 CMR 11.00 shall be enforced upon petition of the Commission or of any town or Person interested by the Supreme Judicial Court or Superior Court or any justice of either court as provided in M.G.L. c. 92, § 112. In addition, upon written request by the Division, the Department shall have the authority to enforce the provisions of St. 1992 c. 36 and 350 CMR 11.00 by all legally permitted enforcement mechanisms including, but not limited to: issuing notices of noncompliance; convening pre-enforcement conferences; issuing water supply orders pursuant to M.G.L. c. 111, § 160; and imposing administrative penalties pursuant to M.G.L. c. 21A, § 16 and 310 CMR 5.00. Such written request by the Division to the Department may seek enforcement for a specified type of violation or area, for a designated group of cases or for an individual matter.

**11.11: Miscellaneous**

(1) Addresses - Offices of Division

Department of Conservation and Recreation

Quabbin Reservoir

485 Ware Road

Belchertown, Massachusetts 01007

Department of Conservation and Recreation

Wachusett Reservoir

P.O. Box 206

Clinton, Massachusetts 01510

(2) Address of Commission -

Department of Conservation and Recreation

251 Causeway Street, Suite 600

Boston, Massachusetts 02114

(3) Address of Department -

Department of Environmental Protection

Commonwealth of Massachusetts

Regional Division

One Winter Street

Boston, Massachusetts 02108

(4) Access to Property by Division - Any Person making a request for Watershed determination of applicability, an application for variance or a request for Exemption to the Division shall, upon request, allow the Division or its duly authorized representatives to inspect the property in question in order to assist the Division in the determination which is to be made. Personnel of the Division may enter, at reasonable times, any property, public or private, for the purpose of investigating or inspecting any condition relating to the discharge or possible discharge of Pollutants into the Watershed System and may make such tests as may be necessary to determine the existence and nature of such discharge as provided in M.G.L. c. 21, § 4.

#### **11.12: Severability**

If any provision or any part of 350 CMR 11.00 or the application thereof is held to be invalid, such invalidity shall not affect any other provision of 350 CMR 11.00.

#### **11.13: Forms**

Forms for use under the Watershed Protection Act shall be as follows:

Form 1 - Request for Watershed Determination of Applicability

Form 2 - Applicability Decision

Form 3 - Application for Variance

Form 4 - Variance Decision for Recording in Registry of Deeds

Form 5 - Request for Exemption of a Tributary

Forms 1, 3 and 5 and a Guidance Document, which may be of assistance in completing the forms, may be obtained from the Division at the addresses specified in 350 CMR 11.11(1) and (2).

#### REGULATORY AUTHORITY

350 CMR 11.00: St. 1992, c. 36.

## **Advisory Committee Legislation**

GENERAL LAWS OF MASSACHUSETTS

**PART I.  
ADMINISTRATION OF THE GOVERNMENT**

---

**TITLE XIV.  
PUBLIC WAYS AND WORKS**

---

**CHAPTER 92. METROPOLITAN SEWERS, WATER AND PARKS**

**ARTICLE PROVISIONS.**

**Chapter 92: Section 114 Quabbin watershed advisory committee**

*[ Text of section effective until July 1, 2003. Repealed by 2003, 26, Sec. 289. See 2003, 26, Sec. 715.]*

Section 114. The commissioner is hereby authorized and directed to establish the Quabbin watershed advisory committee. The purpose of the committee shall be to advise the division on its policies and regulations regarding fishing, boating and other recreational activities and environmental, wildlife and habitat matters within the Quabbin watershed. The commissioner of the metropolitan district commission shall appoint to said advisory committee one person from three names nominated by each of the following organizations: the Massachusetts Council of Sportsmen, the Trout Unlimited, the Quabbin Fisherman's Association, the Worcester County League of Sportsmen, the North Worcester County Quabbin Anglers, the Massachusetts Audubon Society, the Swift River Valley Historical Society, the Massachusetts Wildlife Federation, the New England Sierra Club, and the Friends of Quabbin, Inc.

The commissioner shall also appoint one member from the general public. The committee shall elect a chairperson from among its members, shall meet at least twice each calendar year, and may provide for alternate members to participate fully in its meetings whenever a regular member is unable to do so.

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**PART I.  
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**TITLE XIV.  
PUBLIC WAYS AND WORKS**

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**CHAPTER 92. METROPOLITAN SEWERS, WATER AND PARKS**

**ARTICLE PROVISIONS.**

**Chapter 92: Section 114A Ware river watershed advisory committee**

*[ Text of section effective until July 1, 2003. Repealed by 2003, 26, Sec. 289. See 2003, 26, Sec. 715.]*

Section 114A. The commissioner is hereby authorized and directed to establish a Ware river watershed advisory committee. The purpose of the committee shall be to advise the division on its policies and regulations regarding recreational activities, land use and environmental, wildlife and habitat matters within the Ware river watershed. The commissioner of the metropolitan district commission shall appoint to said advisory committee one person from three names nominated by each of the following organizations: the Massachusetts Council of Sportsmen, the Worcester County League of Sportsmen, Trout Unlimited, a rod and gun club located in the town of Barre, Hubbardston, Oakham or Rutland, a designee of the board of selectmen of each of the towns of Barre, Hubbardston, Oakham and Rutland, a representative of the historical societies in each of the towns of Barre, Hubbardston, Oakham and Rutland, a representative of the Massachusetts Wildlife Federation, a representative of the Massachusetts Audubon Society, a representative of the Sierra Club, and a representative of the Upper Ware river watershed association and one member from the general public.

The committee shall elect a chairperson from among its members, shall meet at least twice each calendar year and may provide for alternate members to participate fully in its meetings whenever a regular member is unable to do so.

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GENERAL LAWS OF MASSACHUSETTS

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**CHAPTER 92A 1/2. WATERSHED MANAGEMENT**

**Chapter 92A 1/2: Section 13 Quabbin watershed advisory committee**

*[Text of section added by 2003, 26, Sec. 290 effective July 1, 2003.]*

Section 13. The commissioner shall establish the Quabbin watershed advisory committee. The purpose of the committee shall be to advise the division on its policies and regulations regarding fishing, boating and other recreational activities and environmental, wildlife and habitat matters within the Quabbin watershed. The commissioner of the department shall appoint to the advisory committee 1 person from 3 names nominated by each of the following organizations: the Massachusetts Council of Sportsmen, the Trout Unlimited, the Quabbin Fisherman's Association, the Worcester County League of Sportsmen, the North Worcester County Quabbin Anglers, the Massachusetts Audubon Society, the Swift River Valley Historical Society, the Massachusetts Wildlife Federation, the New England Sierra Club, and the Friends of Quabbin, Inc.

The commissioner shall also appoint 1 member from the general public. The committee shall elect a chairperson from among its members, shall meet at least twice each calendar year, and may provide for alternate members to participate fully in its meetings whenever a regular member is unable to do so.

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**PART I.  
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**CHAPTER 92A 1/2. WATERSHED MANAGEMENT**

**Chapter 92A 1/2: Section 14 Ware river watershed advisory committee**

*[Text of section added by 2003, 26, Sec. 290 effective July 1, 2003.]*

Section 14. The commissioner shall establish a Ware river watershed advisory committee. The purpose of the committee shall be to advise the division on its policies and regulations regarding recreational activities, land use and environmental, wildlife and habitat matters within the Ware river watershed. The commissioner of the department shall appoint to the advisory committee 1 person from 3 names nominated by each of the following organizations: the Massachusetts Council of Sportsmen, the Worcester County League of Sportsmen, Trout Unlimited, a rod and gun club located in the town of Barre, Hubbardston, Oakham or Rutland, a designee of the board of selectmen of each of the towns of Barre, Hubbardston, Oakham and Rutland, a representative of the historical societies in each of the towns of Barre, Hubbardston, Oakham and Rutland, a representative of the Massachusetts Wildlife Federation, a representative of the Massachusetts Audubon Society, a representative of the Sierra Club, and a representative of the Upper Ware river watershed association and 1 member from the general public.

The committee shall elect a chairperson from among its members, shall meet at least twice each calendar year and may provide for alternate members to participate fully in its meetings whenever a regular member is unable to do so.

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## **Appendix B - American Water Works Association**

Statement of Policy on Public Water Supply Matters: Recreational Use of Domestic Water Supply Reservoirs

Adopted by the Board of Directors June 13, 1971, reaffirmed Jan. 28, 1979, and Jan. 25, 1987, revised June 23, 1996 and June 13, 2004

**Because the American Water Works Association (AWWA) supports the principle that water of highest quality should be used as the source of supply for public water systems, the risks and potential mitigation requirements of any recreational activity on water supply reservoirs should be identified and publicly evaluated. In the evaluation, utility- and customer-determined acceptable levels of risk should be given the highest consideration.**

Recreational use of source waters and the supporting land-based infrastructure necessary to support recreational activities increase the potential for microbial, physical, and chemical contaminants in the drinking water produced from these source waters. When making decisions regarding recreational uses of water supply reservoirs, utilities should give strong consideration to the potential for water quality degradation, the level of increased risk and customer acceptance of that risk, the current level of treatment, and additional treatment requirements, uncertainties, and costs that may be incurred.

To address potential recreation impacts, utilities and other responsible parties should monitor water quality. This information should be used to assess the appropriate level of recreational use of water resources and other monitoring required to evaluate the long-term effects of such recreation. The costs for such monitoring, evaluations, and mitigation should be borne by those proposing or benefiting from the recreational activity, not by the utility or its customers.

If recreation already exists on a reservoir, the water utility should work with other stakeholders to develop an integrated reservoir management plan to evaluate and, if necessary, mitigate water quality impacts and minimize increased risks. Body-contact recreation (swimming, water skiing, wind surfing) and use of polluting two-cycle gasoline engines on boats should be discouraged.

Protection of public health and drinking water quality should be the highest priority in operational decisions for reservoirs used jointly for water supply and recreation.

Finished water reservoirs should not be used for any form of recreation under any circumstances.